

HOUSE BILL NO. 155

INTRODUCED BY M. NOENNIG

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING THE FINANCING OF AND PAYMENT FOR REAL PROPERTY PURCHASES; INCREASING THE TIME FOR GIVING A CERTIFICATE OF DISCHARGE FROM A MORTGAGE; INCREASING THE PENALTY FOR REFUSAL OR FAILURE TO GIVE THE CERTIFICATE ON TIME; INCREASING FROM 30 TO 40 ACRES THE MAXIMUM SIZE OF ACREAGE COVERED BY THE SMALL TRACT FINANCING ACT OF MONTANA; ~~AND~~ AMENDING SECTIONS 71-1-212, 71-1-302, 71-1-303, AND 71-1-304, MCA; ~~AND REPEALING SECTION 70-32-221, MCA; AND~~ REPEALING SECTION 70-32-221, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-1-212, MCA, is amended to read:

"71-1-212. Penalties for failure to give certificate of discharge or release after full performance.

~~Any mortgagee or his personal representative or assignee, as the case may be, after~~ After the full performance of the conditions of ~~the a~~ mortgage; ~~and whether before or after a breach thereof of the~~ and whether before or after a breach thereof of the mortgage, ~~a mortgagee or the personal representative or assignee of the mortgagee who shall for the~~ a mortgagee or the personal representative or assignee of the mortgagee who shall for the space of 30 days after being requested ~~refuse or neglect~~ refuses or neglects to execute, acknowledge, and deliver to the mortgagor a certificate of discharge or release ~~thereof shall be~~ of the mortgage within 90 days after a request for one is liable to the mortgagor, ~~his or the mortgagor's heirs; or assigns in the sum~~ heirs; or assigns in the sum of ~~\$100~~ \$500 and also for all actual damages ~~occasioned by such~~ resulting from the neglect or refusal."

Section 2. Section 71-1-302, MCA, is amended to read:

"71-1-302. Policy. Because the financing of homes and business expansion is essential to the

development of the state of Montana and because financing of homes and business expansion, usually involving areas of real estate of not more than ~~30~~ 40 acres, has been restricted by the laws relating to mortgages of real property and because more financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is ~~hereby declared to be~~ the public policy of the state of Montana to permit the use of trust

1 indentures for estates in real property of not more than ~~30~~ 40 acres as provided in this part."

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3 **Section 3.** Section 71-1-303, MCA, is amended to read:

4 **"71-1-303. Definitions.** As used in this part, unless the context requires otherwise, the following
5 definitions apply:

6 (1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the
7 person for whose benefit a trust indenture is given or ~~his~~ the person's successor in interest, ~~and who shall~~
8 may not be the trustee.

9 (2) "Grantor" means the person conveying real property by a trust indenture as security for the
10 performance of an obligation.

11 (3) ~~"Thirty acres" means 30 acres of land.~~

12 ~~——(4) "Trust indenture" means an indenture executed in conformity with this part and conveying real~~
13 ~~property to a trustee in trust to secure the performance of an obligation of the grantor or other person~~
14 ~~named in the indenture to a beneficiary.~~

15 ~~(5)(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust~~
16 ~~indenture or his~~ the person's successor in interest."

17

18 **Section 4.** Section 71-1-304, MCA, is amended to read:

19 **"71-1-304. Trust indentures authorized -- power of sale for breach in trustee.** (1) ~~Transfers~~ A
20 transfer in trust of ~~any~~ an interest in real property of an area not exceeding ~~30~~ 40 acres may be made to
21 secure the performance of an obligation of a grantor or any other person named in the indenture to a
22 beneficiary ~~provided that it is unlawful to substitute. However,~~ a trust indenture may not be substituted
23 ~~for any~~ a mortgage that was in existence on March 5, 1963.

24 (2) ~~Where any~~ When a transfer in trust of ~~any~~ an interest in real property is made to secure the
25 performance of the obligation referred to in subsection (1), a power of sale is conferred upon the trustee
26 to be exercised after a breach of the obligation for which the transfer is security.

27 (3) A trust indenture executed in conformity with this part may be foreclosed by advertisement
28 and sale in the manner provided in this part or, at the option of the beneficiary, by judicial procedure as
29 provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised
30 by the trustee without express provision in the trust indenture.

1 (4) ~~Where the~~ If a trust indenture states that the real property involved does not exceed ~~30~~ 40
2 acres, the statement is binding upon all parties and conclusive as to compliance with the provisions of this
3 part relative to the power to make a transfer, trust, and power of sale."

4

5 ~~NEW SECTION. Section 5. Repealer. Section 70-32-221, MCA, is repealed.~~

6

7 NEW SECTION. SECTION 5. REPEALER. SECTION 70-32-221, MCA, IS REPEALED.

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